

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 22, 2003

SENATE BILL

No. 871

Introduced by Senator Burton

February 21, 2003

An act to amend Section 39152 of the Health and Safety Code, relating to air quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 871, as amended, Burton. Air quality: gasoline vapor recovery systems.

(1) Existing law requires, until January 1, 2006, any authorized representative of the State Air Resources Board, an air quality management district, or an air pollution control district, or a designated officer of those entities, if that authorized representative detects a minor violation in the course of conducting an inspection authorized pursuant to the air pollution control laws of the state, to issue a notice to comply prior to leaving the site at which the minor violation is alleged to have occurred, if the authorized representative determines that a notice to comply is warranted.

Existing law authorizes the state board to adopt procedures for determining the compliance of any system designed for the control of gasoline vapor emissions during gasoline marketing operations, including storage and transfer operations, with performance standards that are reasonable and necessary to achieve or maintain any applicable ambient air quality standards. Existing law also requires the state board to adopt additional performance standards that are reasonable and necessary to ensure the systems for the control of gasoline vapors

resulting from motor vehicle fueling operations do not cause excessive gasoline liquid spillage or excessive evaporative emissions.

This bill would include as a minor violation, any violation of a requirement imposed on vapor recovery systems on gasoline cargo tanks, if the violation is the owner or operator's first violation of that nature, and the state board, a district, or authorized or designated officer determines that the violation is de minimis, does not pose a threat to the public health or the environment, is not knowing or intentional, and does not cause or contribute to a violation of any state or federal ambient air quality standard or toxic air contaminant standard. The additional duties for a district under this bill would impose a state-mandated local program.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 39152 of the Health and Safety Code is
- 2 amended to read:
- 3 39152. (a) An authorized representative of the state board or
- 4 district or an authorized or designated officer, who, in the course
- 5 of conducting an inspection, detects a minor violation shall issue
- 6 a notice to comply before leaving the site at which the minor

1 violation is alleged to have occurred if the authorized
2 representative finds that a notice to comply is warranted.

3 (b) A person who receives a notice to comply pursuant to
4 subdivision (a) shall have the period specified in the notice to
5 comply from the date of receipt of the notice to comply in which
6 to achieve compliance with the requirement cited on the notice to
7 comply. Within five working days of achieving compliance, the
8 person who received the notice to comply shall sign the notice to
9 comply and return it to the state board's or district's representative
10 or an authorized or designated officer, stating that the person has
11 complied with the notice to comply. A false statement that
12 compliance has been achieved is a violation of this division
13 pursuant to Section 42400.2 or 42402.2.

14 (c) A single notice to comply shall be issued for all minor
15 violations cited during the same inspection and the notice to
16 comply shall separately list each cited minor violation and the
17 manner in which each minor violation may be brought into
18 compliance.

19 (d) A notice to comply shall not be issued for any minor
20 violation that is corrected immediately in the presence of the
21 inspector. Immediate compliance in that manner may be noted in
22 the inspection report, but the person shall not be subject to any
23 further action by the state board's or district's representative or an
24 authorized or designated officer.

25 (e) Except as otherwise provided in subdivision (g), a notice to
26 comply shall be the only means by which the state board's or
27 district's representative or an authorized or designated officer shall
28 cite a minor violation. The state board's or district's representative
29 or an authorized or designated officer shall not take any other
30 enforcement action specified in this division to enforce the minor
31 violation against a person who has received a notice to comply if
32 the person is in compliance with this section.

33 (f) If a person who receives a notice to comply pursuant to
34 subdivision (a) disagrees with one or more of the alleged violations
35 cited in the notice to comply, the person shall give written notice
36 of appeal to the state board or district, which shall develop a
37 process for reviewing and determining the disposition of the
38 appeal.

39 (g) Notwithstanding any other provision of this section, if a
40 person fails to comply with a notice to comply within the

1 prescribed period, or if the state board or district or an authorized
2 or designated officer determines that the circumstances
3 surrounding a particular minor violation warrant immediate
4 enforcement to prevent harm to the public health or safety or to the
5 environment, the state board or district or an authorized or
6 designated officer may take any needed enforcement action
7 authorized by this division.

8 (h) A notice to comply issued to a person pursuant to this
9 section shall contain a statement that the inspected facility may be
10 subject to reinspection at any time. Nothing in this section shall be
11 construed as preventing the reinspection of a facility to ensure
12 compliance or to ensure that minor violations cited in a notice to
13 comply have been corrected.

14 (i) Nothing in this section shall be construed as preventing the
15 state board or district or an authorized or designated officer, on a
16 case-by-case basis, from requiring a person subject to a notice to
17 comply to submit reasonable and necessary documentation to
18 support a claim of compliance by the person.

19 (j) Nothing in this section restricts the power of a city attorney,
20 district attorney, county counsel, or the Attorney General to bring,
21 in the name of the people of California, any criminal proceeding
22 otherwise authorized by law. Furthermore, nothing in this section
23 prevents the state board or district, or any representative of the
24 state board or district, from cooperating with, or participating in,
25 that proceeding.

26 (k) Notwithstanding any other provision of this section, if the
27 state board or district or an authorized or designated officer
28 determines that the circumstances surrounding a particular minor
29 violation warrant the assessment of a civil penalty pursuant to this
30 division or is required by federal law, in addition to issuance of a
31 notice to comply, the state board or district or an authorized or
32 designated officer shall assess a civil penalty in accordance with
33 this division, if the state board or district or an authorized or
34 designated officer makes written findings that set forth the basis
35 for the determination of the state board or district.

36 (l) For the purposes of this section, the term “minor violation”
37 includes a violation of any requirement imposed on a vapor
38 recovery system on a gasoline cargo tank that is subject to the
39 requirements of Article 5 (commencing with Section 41950) of
40 Chapter 3 of Part 4, and any rule or regulation adopted by a district

pursuant to that article, if the violation meets all of the following criteria:

(1) Is the owner or operator's first violation of that nature.

(2) Is determined by the state board, a district, or an authorized or designated officer to be a de minimis violation.

(3) Is determined by the state board, a district, or an authorized or designated officer to not pose a threat to the public health or the environment.

(4) Is determined by the state board, a district, or an authorized or designated officer to not be knowing or intentional.

(5) Is determined by the state board, a district, or an authorized or designated officer to not cause or contribute to a violation of any state or federal ambient air quality standard or toxic air contaminant standard.

~~SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.~~

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.